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IN THE SUPREME COURT FOR THE
STATE OF UTAH

ANDREA MARTINEZ, etal,)	
Plaintiff - Respondent,)	
VS.)	Case No.
BONA VISTA WATER IMPROVEMENT DISTRICT,)	16015
Defendant - Appellant.)	

BRIEF OF APPELLANT

Appeal from the Decision of the Second Judicial
District Court for Weber County, Utah
The Honorable Calvin Gould, Judge

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IN THE SUPREME COURT FOR THE

STATE OF UTAH

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ANDREA MARTINEZ, etal,)

Plaintiff -)

Respondent,)

vs.)

Case No.

BONA VISTA WATER IMPROVEMENT DISTRICT,)

16015

Defendant -)

Appellant.)

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STATEMENT OF THE NATURE OF THE CASE

This case is an action by the real property owners of the Bona Vista Water District to have their property withdrawn from the Water District.

DISPOSITION IN LOWER COURT

The lower court decreed that the withdrawn area be relieved of all taxes and charges for the payment of revenue bonds and maintenance and operation costs of the Bona Vista Water Improvement District, except that if said Improvement District has any revenue bonds or general obligation bonds outstanding and unpaid on the date of the filing of the petition, the withdrawn area shall continue to be taxable under the provisions of Section 17-6-3.8 (b) Utah Code Annotated 1953, but only to the extent and only in those years where it

becomes necessary to levy such a tax on the withdrawn area to forestall or prevent a default in the payment of principal and interest.

RELIEF SOUGHT ON APPEAL

The relief sought by the Water District is that the matter be remanded to the District Court for an order requiring that the property of the petitioners and other residents of the district be taxed for their just proportion of the outstanding general obligation bonds.

STATEMENT OF FACTS

The Bona Vista Water Improvement District is a political subdivision of the State of Utah formed and operating pursuant to the provisions of the Utah Code Annotated Title 17 Chapter 6.

The property in question is located in Weber County, Utah, within the boundaries of the Bona Vista Water Improvement District and is subject to the general obligation bonds of the district.

In 1958, the developers of the property requested that the area be served with culinary water by the District. In the anticipation of serving all the prospective residential area, a ten inch main line was installed. In 1960 the developers then requested that the area be annexed into Ogden City, which was accomplished. The city ran the lines for servicing each resident using water provided in bulk by the Water District until 1961, at which time the city provided

their own water.

The property involved has remained taxable by the water district until the petition for withdrawal was filed.

ARGUMENT

POINT I

THE COURT FAILED TO REQUIRE THE RESIDENTS OF THE WITHDRAWN AREA TO CONTINUE THE PAYMENT OF THEIR JUST PROPORTION OF THE GENERAL OBLIGATION BONDS OF THE DISTRICT OUTSTANDING AT THE TIME OF FILING OF THE PETITION FOR WITHDRAWAL.

The provisions of Utah Code Annotated Title 17 Chapter 6 Section 32 appear very clear and concise in stating:

"provided, however, that the property within the said improvement district as it shall exist at the time of such withdrawal shall continue taxable for the purpose of paying its just proportion of the general obligation bonds of the improvement district outstanding at the time of the filing of the petition for withdrawal and until such bonded indebtedness shall have been satisfied."

In construing the same section, the Court properly determined that it should retain power to order the levy of taxes for the payment of revenue bonds, when necessary as follows:

"but only to the extent and only in those years where it becomes necessary to levy such tax on the withdrawn area in order to forestall or prevent a default in the payment of principal and interest or either, on any revenue bond of the district outstanding on the date of the filing of the petition."

The Utah Constitution in Article XIV Section 7 in reference to public debt, provides:

"Nothing in this article shall be so construed as to impair or add to the obligation of any debt heretofore contracted in accordance with the laws of Utah Territory, by any county, city, town or school district....."

There is no question that the general obligation bonds represent a valid contract with the property involved being the taxable basis for the repayment of the bonds.

While no case could be located which was precisely similar to the present factual situation, the general rule is that the obligation for indebtedness remains with the property and should not be legislatively or judicially terminated. As stated in STATE OF FLORIDA EX REL. J.B. JOHNSON, Attorney General, U.L.E. GOODGAME et al. Fla 108 So. 836,:

"Where a municipal or public corporation is legislated out of existence, and its territory annexed to other corporations, the latter, unless the legislature otherwise provides, are entitled to its property, and severally liable for a proportionate share of its then subsisting legal debts, and vested with the power to raise revenue wherewith to pay them, by levying taxes upon the property transferred and the persons residing therein."

In 47 ALR 128, Municipal Liability - Dissolution etc. which follows, the Florida case it is stated:

"On the dissolution of a municipal corporation or the consolidation of its territory with that of another municipal body, the rights of its creditors are not destroyed, since it is not competent for the legislature to impair its contractual obligations."

In dealing with the question of bonds in Jacksonville Port Authority vs. State of Florida 161 S. 2d 825, the Court pointed out:

"The 1963 Act was not intended to and does not purport to relieve the City from its liability for the payment of the 1941 - 1913 exchanged bonds; and indeed, such an attempt would have been futile. It is clear, under well settled principles of law, that even though the city divests itself of the title to the property for the acquisition of which the 1941 - 1913 exchanged bonds

were issued, the City cannot legally be relieved of its liability for the payment of its obligation under such bonds, any more than a mortgage debtor can relieve himself of liability for the debt by transferring the mortgage property."


The general rule is again pointed out in 64 C.J.S., Municipal Corporations 1956, which states:

"An original or subsequent holder of municipal bonds or securities takes them subject to, and has the right to rely on, the terms of the constitutional and statutory provisions or law under which they were issued, and which were in force and effect at the time of the issuance of the bonds. The rights and remedies of such a holder are fixed and determined by the terms of the bond, and by the legislative acts or law relative thereto at the time of the bonds are issued, and generally such rights and remedies of a bond holder cannot be restricted by the municipal corporation nor can they be adversely affected by subsequent legislation, nor are such rights and remedies affected by the repeal of the statute under which the bonds were issued particularly where it is so provided by statute."

CONCLUSION

Neither the constitutional nor legislative mandates should be violated in regard to protecting the contractual obligation of the Bona Vista Water District. The property involved should remain taxable for its proportionate share for payment of the outstanding general obligation bonds.

Respectfully submitted this 22nd day of November, 1978.



CARL T. SMITH

Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

Two copies of the foregoing Brief of Appellant were posted in the U.S. Mail, postage prepaid and addressed to the Attorney for the Respondent, Darrell Renstrom, 2640 Washington Blvd., Ogden, Utah, 84401, this 10th day of November, 1978.



CARL T. SMITH